

## CALIFORNIA COASTAL COMMISSION

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# Items F 4 & 5

**Staff:** CAC-SF  
**Staff Report:** July 28, 2005  
**Hearing Date:** August 12, 2005

## STAFF REPORT AND FINDINGS FOR CEASE AND DESIST ORDER AND RESTORATION ORDER

**CEASE AND DESIST ORDER AND  
RESTORATION ORDER:**

CCC-05-CD-08 and CCC-05-RO-05

**RELATED VIOLATION FILE:**

V-4-92-030

**PROPERTY LOCATION:**

The property is located at 2100 McReynolds Road, off of Latigo Canyon Road, in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 1**).

**DESCRIPTION OF PROPERTY:**

Approximately 43 acres, located within a wildlife corridor and containing a United States Geological Survey-recognized blue-line stream as well as environmentally sensitive chaparral, oak woodlands, and riparian oak woodland habitat (APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055).

**PROPERTY OWNER:**

Madalon Witter

**PERSONS SUBJECT  
TO ORDERS:**

Madalon Witter, Douglas Richardson

**VIOLATION DESCRIPTION:**

Unpermitted grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas

with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Notice of Violation File No. CCC-05-NOV-08
2. Cease and Desist Order and Restoration Order Files No. CCC-05-CD-08 and CCC-05-RO-05;
3. Claim of Vested Rights File No. VR-4-97-1;
4. CDP No. P-2-17-78-2706
5. CDP No. 5-82-377
6. Site Visit Photographs File (526 photographs taken from 6/2/92 to 6/28/05)
7. Exhibits 1 through 32.

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2)), and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308, and 15321).

**I. SUMMARY OF STAFF RECOMMENDATION**

The property at issue in this enforcement matter is 43-acres located at 2100 McReynolds Road, off of Latigo Canyon Road, in the Santa Monica Mountains area of unincorporated Los Angeles County. The property is located within a wildlife corridor<sup>1</sup>, and contains large, contiguous areas of chaparral and oak woodlands, as well as an intermittent blue-stream, recognized by the United States Geological Survey (USGS), and associated riparian oak woodland habitat. Madalon Witter is the owner of the property, identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, and 4465-006-055. Douglas Richardson, a

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<sup>1</sup> The Malibu/Santa Monica Mountains Land Use Plan designates certain areas as wildlife migration corridors, and considers them to be "Sensitive Environmental Resources".

prior owner of the property, is also subject to these orders because he undertook unpermitted development activities on the property. In addition, since conveying the property to Ms. Witter in 1987, Mr. Richardson has actively managed the property by collecting rents and representing Ms. Witter with respect to alleged Coastal Act violations on the property.

Unpermitted development on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks.

In addition to being unpermitted, development on parcels identified as APNs 4465-006-054 and 4465-006-055 was conducted in violation of an existing Coastal Development Permit (CDP) and associated deed restriction, limiting future development and prohibiting further subdivisions. Furthermore, the 43-acres property is divided into four legal lots. However, four attempted unpermitted subdivisions have occurred. Some of these are longstanding violations, and all are causing extensive damage to wildlife, habitat, and water and soil quality.

Staff recommends that the Commission approve Cease and Desist Order CCC-05-CD-08 (CDO) and Restoration Order CCC-05-RO-05 (RO) (as described below, and hereinafter referred to as “the proposed orders”), directing Ms. Witter and Mr. Richardson to: 1) cease and desist all construction and/or maintenance of development activities on the property that are unpermitted and subject to Coastal Act permit requirements, 2) remove all unpermitted development from the property, or submit a CDP to retain or remove development existing on the property in 1998, at the time of a previous settlement agreement (discussed further below) and remove unpermitted development that has occurred since the settlement agreement, 3) restore areas of the property that have been negatively impacted by unpermitted development, to the condition they were in before Coastal Act violations occurred, and 4) record three mergers to restore all parcels on the property to the configuration that existed before Coastal Act violations occurred.

Commission staff first became aware of the presence of unpermitted development on the property on May 19, 1992. Subsequent site visits confirmed that extensive development had been undertaken on the property and a search of Commission records concluded that no CDPs were obtained for the development. Since 1992, Commission staff has made efforts to address unpermitted development. In October 1998, the Commission, Ms. Witter and Mr. Richardson entered into a settlement agreement, to avoid further enforcement action and litigation, which directed Ms. Witter and Mr. Richardson to file complete CDP applications to remove or retain the unpermitted development and to correct the unpermitted subdivision of the property. Despite this, applications were not submitted until October 29, 2002, remained incomplete for almost a

year, were never completed as required, and were ultimately returned to Ms. Witter on September 18, 2003.

The unpermitted development remains on the property to this date, and Ms. Witter and Mr. Richardson have taken no steps to remedy these violations. Therefore, Commission staff has initiated CDO and RO proceedings to finally bring the property into compliance with the Coastal Act.

The activities that have occurred on the property constitute development, as defined in Coastal Act Section 30106. The development was all undertaken without a CDP, in violation of Coastal Act Section 30600. Moreover, the unpermitted development on parcels identified as APNs 4465-006-054 and 4465-006-055 violates CDP No. P-2-17-2706 and the deed restriction recorded pursuant to the CDP, which prohibits future subdivision of the lots and restricts development to one single-family residence per lot. Thus, the Commission has the authority, under Coastal Act Section 30810, to issue a Cease and Desist Order in this matter.

Furthermore, the unpermitted development is inconsistent with the resource protection policies of Chapter 3 of the Coastal Act, including Sections 30231 (Biological Productivity; Water Quality), 30240 (Environmentally Sensitive Habitat Areas), 30251 (Scenic and Visual Qualities), and 30253 (Minimization of Adverse Impacts), and is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations. The property contains native chaparral and riparian oak woodlands, components of the region's rare and valuable Mediterranean ecosystem and part of a larger, healthy habitat area that extending into state and national parklands. Grading and vegetation removal has disturbed or eradicated portions of this valuable habitat and the placement of structures as well as soil compaction from road creation has hindered revegetation. Furthermore, discharges of waste materials from residences and trailers leak directly onto the ground and impact the soil and water quality onsite and potentially in surrounding areas. Consequently, the Commission has the authority, under Coastal Act Section 30811, to issue a Restoration Order in this matter.

The Coastal Commission has jurisdiction to take enforcement action to remedy this violation because the property lies within the Coastal Zone, in an unincorporated area of Los Angeles County, which is not covered under a certified Local Coastal Program.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in Section 13185 and 13195 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, Subchapter 8.

For a Cease and Desist and Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any

question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator or his representative may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR Section 13185, 13186, and 13195, incorporating by reference Sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of two separate motions, corresponding to the Cease and Desist Order and the Restoration Order respectively, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

### **III. STAFF RECOMMENDATION**

#### **1.A. Motion - Cease and Desist Order:**

*I move that the Commission issue Cease and Desist Order No. CCC-05-CD-08 pursuant to the staff recommendation.*

#### **1.B. Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Cease and Desist Order CCC-05-CD-08. The motion passes only by an affirmative vote of the majority of Commissioners present.

#### **1.C. Resolution to Issue Cease and Desist Order:**

The Commission hereby issues Cease and Desist Order No. CCC-05-CD-08, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a CDP.

#### **2.A. Motion - Restoration Order:**

*I move that the Commission issue Restoration Order No. CCC-05-RO-05, pursuant to the staff recommendation.*

#### **2.B. Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in the issuance of Restoration Order CCC-05-RO-05. The motion passes only by an affirmative vote of a majority of Commissioners present.

## **2.C. Resolution to Issue Restoration Order:**

The Commission hereby issues Restoration Order No. CCC-05-RO-05, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a CDP, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

## **IV. FINDINGS FOR CEASE AND DESIST ORDER CCC-05-CD-08 AND RESTORATION ORDER CCC-05-RO-05**

### **A. History of Violation**

The property is an approximately 43-acre site in the Santa Monica Mountains area of unincorporated Los Angeles County, and is characterized by mountainous terrain with elevations ranging from 1800 feet to 2200 feet above sea level. The property is identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, and 4465-006-055 (**Exhibit 2**).<sup>2</sup> The site is accessible by a series of private, unpermitted dirt roads and McReynolds Road, which connects the south-east boundary of the property to Latigo Canyon Road. A USGS-recognized blue-line intermittent stream bisects the southern portion of the property and the entire site is located within a designated Wildlife Migration Corridor (**Exhibit 3**).

On May 19, 1992, Commission staff received reports that grading and vegetation clearance had occurred on the property. Additional reports of unpermitted development on the property were submitted by Los Angeles County Department of Building and Safety, Los Angeles County Department of Regional Planning, Los Angeles County Fire Department, and California Department of Fish and Game. Staff confirmed these reports by comparing aerial photographs of the property from 1975, 1979, 1986, and 1993 and by conducting site visits. The first site visit was conducted on October 27, 1993. Commission staff was required to obtain a court-issued inspection warrant to conduct this site visit due to Ms. Witter and Mr. Richardson's refusal to allow access to the property (**Exhibit 4**). An additional site visit, conducted on October 31, 2002, confirmed the continuing presence of the cited unpermitted development on the property. During site visits, Commission staff observed that tenants residing on the property in unpermitted trailers and motor homes were discharging their solid and liquid wastes either directly onto the ground or barely underground, using basic drainage tubing buried to a shallow depth, without any permits. These waste materials leach into the environment, potentially contaminating the groundwater, surface water runoff, and the blue-line stream that bisects the property. The contamination has the clear potential to harm wildlife on the property, adjacent private properties, and public parklands, and to pose a public health risk.

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<sup>2</sup> As discussed further herein, only four of these parcels are actually legal parcels under the Coastal Act.

Staff made numerous attempts to resolve this matter administratively, including, but not limited to, letters dated June 18, 1992, August 3, 1992, September 9, 1992, and March 5, 1993, and telephone calls on January 12, 1993, February 25, 1993, and June 6, 1993. Staff repeatedly requested that Ms. Witter and Mr. Richardson voluntarily submit CDP applications for the cited development and made multiple attempts to schedule meetings with Ms. Witter and Mr. Richardson to discuss a course of action to bring the property into compliance with the resource protection policies of Chapter 3 of the Coastal Act. In addition to being extremely difficult to contact, Ms. Witter and Mr. Richardson did not voluntarily submit CDP applications and did not meet with Commission staff or allow Commission staff access to the property until November 16, 1993, when the Los Angeles Superior Court issued an inspection warrant, allowing Commission staff to conduct a site inspection of the property.<sup>3</sup>

### **Cease and Desist Order No. CCC-93-CD-03**

On June 4, 1993, after numerous unsuccessful attempts to reach an amicable resolution in this matter, Commission staff finally decided to commence CDO proceedings. The Executive Director issued a Notice of Intent to Commence Cease and Desist Order Proceedings to address the unpermitted development on the property, pursuant to Section 30810 of the Coastal Act (**Exhibit 5**). Cease and Desist Order No. CCC-93-CD-03 ("the 1993 order"), unanimously approved by the Commission on November 16, 1993, directed Ms. Witter and Mr. Richardson to cease and desist all unpermitted development and to submit a complete CDP application seeking to either remove the development and restore the site or receive after-the-fact authorization for the development (**Exhibit 6**). The complete CDP application was to be filed within sixty days of the date of issuance of the 1993 order, or by January 15, 1994. Ms. Witter and Mr. Richardson applied to amend the 1993 order to grant the Executive Director of the Commission the discretion to extend the deadline for filing the CDP application. The Commission approved the amendment to the 1993 order on January 13, 1994, to provide more time for Ms. Witter and Mr. Richardson to comply with the order, with a showing of good cause (**Exhibit 7**). The amendment was nullified on February 1, 1994, however, because Witter and Richardson filed a petition for writ of mandate, challenging the 1993 order (**Exhibit 8**).<sup>4</sup>

### **Writ of Mandate**

On January 19, 1994, Ms. Witter and Mr. Richardson filed a Petition for Writ of Administrative Mandamus (Writ of Mandate), challenging the Commission's issuance of the 1993 order (Los Angeles County Superior Court No. BS026924, included as **Exhibit 9**). One of the allegations made in the petition was that Commission staff failed to provide adequate notice of the Commission hearing on the order to Ms. Witter and Mr. Richardson. The court determined that substantial evidence to support the findings of the Commission existed, but concluded that notice

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<sup>3</sup> Additional correspondence between Commission staff, Ms. Witter, and Mr. Richardson took place from November 16, 1993 to the present and is included in the following sections, in chronological order.

<sup>4</sup> Section B.4 of the amended order states that, "Said delegation of authority [of the Executive Director to grant a filing extension] shall terminate upon the initiation of any legal proceeding challenging this order" (see Exhibit 7 at page 2).

was technically insufficient. Although the court directed the Commission to rescind the order, the court also directed the Commission to “to conduct further proceedings” (**Exhibit 10**, at page 1). The Commission rescinded the order on February 5, 1997, including the following language as part of its findings:

*The Commission notes that its decision to vacate CCC-93-CD-03 does not prevent it from considering and issuing a new cease and desist order to bring the subject property into conformity with the Coastal Act (**Exhibit 11**, at page 3).*

The Executive Director issued a Notice of Intent to Commence Cease and Desist Order Proceedings with respect to a second cease and desist order on February 18, 1997, less than two weeks after the 1993 order was rescinded on technical grounds, as described below (**Exhibit 12**).

### **Complaint Filed by Commission**

On January 23, 1995, the Attorney General’s Office, on behalf of the Commission, responded to the filing of the Writ of Mandate, by filing a Complaint for Declaratory Relief, Preliminary and Permanent Injunction, Civil Penalties, and Fines (Los Angeles County Superior Court No. SC034859, included as **Exhibit 13**). The complaint sought to compel Ms. Witter and Mr. Richardson to comply with the 1993 order, which at that time had not yet been rescinded, and to impose fines resulting from noncompliance with the order. In an effort to prevent further litigation as well as the new cease and desist order proceedings described below, the Commission, Ms. Witter, and Mr. Richardson began settlement negotiations. All parties entered into a settlement agreement on October 23, 1998 (**Exhibit 14**).

### **1997 Cease and Desist Order**

Following the advice of the Superior Court to “conduct further proceedings” in this matter, the Executive Director issued a new Notice of Intent to Commence Cease and Desist Order Proceedings to Ms. Witter and Mr. Richardson on February 18, 1997. Commission staff decided to discontinue these proceedings when a settlement agreement was ultimately reached, as described below. In doing so, the Commission relied in good faith that by entering into a settlement agreement with the Commission, Ms. Witter and Mr. Richardson would finally address the unpermitted development and associated resource impacts on the property.

### **Vested Rights Determination**

Commission staff also notes that the Commission previously made a vested rights determination with regards to development on the property. Ms. Witter and Mr. Richardson had continually asserted that unpermitted development activities were conducted on the property before the enactment of the Coastal Act. Finally, on September 2, 1997, more than five years after enforcement action began in this matter, Ms. Witter and Mr. Richardson submitted a vested rights claim (VR-4-97-1), asserting that the unpermitted development on the property existed prior to 1964, and therefore, under Coastal Act Section 30608, the development did not require a CDP. On August 11, 1998, the Commission heard and partially approved and partially denied



Ms. Witter and Mr. Richardson's claim. That decision is final and binding in this proceeding. Thus, any further claim of a vested right to development that was denied during the 1998 proceeding is precluded in the present proceeding, since all vested development has already been identified.

a. Physical Development

The Commission determined that a vested right existed for the following development, which, accordingly, is not addressed by this report and is not be subject to the proposed orders<sup>5</sup>:

1. Private domestic water well and pump
2. One single-family residence (16' x 24' cabin)
3. One storage structure (168 square feet)
4. Garage (600 square feet)
5. All electrical services with valid permits, so long as use is restricted to support development that has a valid development permit

The Commission denied the vested right claim with respect to the following development, which therefore is addressed in this report:

1. Mobile Home Park consisting of :
  - i. 39 developed mobile home sites, including 11 occupied mobile homes
  - ii. several large areas of grading and vegetation removal
  - iii. expansion of the roadway system on the property
  - iv. electrical, septic, and water services for each of the 39 sites
2. One single-family residence
3. Two concrete structures
4. One house site graded and cleared for future development
5. 6 stables and corrals
6. 2 water wells and 8 water tanks

b. Subdivision of Lots

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<sup>5</sup> Any vested development that has been substantially changed is no longer considered vested development under Coastal Act Section 30608 and is subject to the proposed orders.

In addition to the development listed above, the Commission considered whether Ms. Witter and Mr. Richardson had a vested right to the configuration of parcels in the northern portion of the property, now identified as APNs 4464-024-020, 4464-024-022 and APN 4464-024-023, 4464-024-024.<sup>6</sup> The Commission denied Ms. Witter and Mr. Richardson's claim of a vested right to the four-parcel configuration, because not only had the Commission previously approved only a three-parcel subdivision of this area under CDP No. 5-82-377, but in doing so, the Commission specifically denied the proposed four-parcel subdivision that was the subject of the vested rights claim (**Exhibit 15**). The Commission concluded that Ms. Witter and Mr. Richardson should merge APNs 4464-024-22 and 4464-024-023 to bring the parcel configuration into compliance with the existing permit and resolve this additional violation.

Despite the Commission's decision, the current assessor's parcel map shows that Ms. Witter and Mr. Richardson did not merge the parcels as suggested, and in fact, through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without any authorization in a CDP have created six illegal parcels (see **Exhibit 2**). Therefore, the current parcel configuration constitutes unpermitted development and is subject to the proposed orders. The proposed orders direct Ms. Witter and Mr. Richardson to submit a complete application to merge the parcels at issue with the Los Angeles County Department of Regional Planning and to take all necessary steps to successfully merge the parcels, into the configuration that is legal under the Coastal Act. The fourth subdivision created the parcel identified as APN 4464-024-019, which is not owned by Ms. Witter and is not subject to the proposed orders. Therefore, only three of the four subdivisions can be remedied under the proposed orders.

### **Settlement Agreement**

In order to facilitate settlement and in good faith reliance on Ms. Witter and Mr. Richardson's promise to comply with an executed settlement agreement, Commission staff decided not to pursue the second cease and desist order mentioned above. On October 23, 1998, the Commission, Ms. Witter, and Mr. Richardson entered into a settlement agreement. Like CCC-93-CD-03, the settlement agreement required Ms. Witter and Mr. Richardson to submit CDP applications to either remove or retain the unpermitted development on the property.<sup>7</sup> Additionally, Section 3.0 of the settlement agreement directed Ms. Witter and Mr. Richardson to pay a \$15,000 fine. In lieu of immediate payment of the fine, Section 3.0.1 of the settlement agreement allowed Ms. Witter and Mr. Richardson the option of deferring payment of the fine and any interest that accrued during deferral until such time as the property was sold, through the use of a promissory note secured by a deed of trust.

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<sup>6</sup> The Commission did not consider the legality of parcels identified as APNs 4465-006-054 and 4465-006-055 in the Vested Right Determination because Ms. Witter and Mr. Richardson did not claim a vested right to the parcels and therefore, did not include the parcels in their application.

<sup>7</sup> Section 4.2 of the settlement agreement required the submittal of a complete CDP application pertaining to the attempted unpermitted subdivision of the property and a separate complete CDP application to remove and restore or retain the other unpermitted development on the property.

Unfortunately, Ms. Witter and Mr. Richardson violated the settlement agreement by failing to submit complete CDP applications. On February 23, 1999, Commission staff met with Ms. Witter and Mr. Richardson's attorney and Mr. Petrovsky. At that meeting, Ms. Witter and Mr. Richardson submitted three documents: (1) a copy of an Approval in Concept issued by LA County for the lot line adjustment, (2) a set of general site plans (to support lot line adjustment), and (3) a conceptual site restoration plan. Commission staff informed Ms. Witter and Mr. Richardson that the submittal did not constitute a CDP application and suggested that a formal CDP application be submitted. In addition, Commission staff informed Ms. Witter and Mr. Richardson that the restoration plan was inadequate as submitted and advised them to hire a restoration specialist to prepare the restoration plan. Ms. Witter and Mr. Richardson were advised to contact Commission staff upon hiring the specialist so that a meeting could be scheduled at the site and mutual agreement could be reached as to the necessary components of the restoration plan. No phone call was received, and a meeting with a specialist at the property did not occur.

Ms. Witter and Mr. Richardson submitted a formal but incomplete CDP applications on October 29, 2002. Commission staff notified Ms. Witter and Mr. Richardson of the incomplete status of these applications, and clearly outlined the nineteen separate items that Ms. Witter and Mr. Richardson needed to submit to complete the applications, in letters, dated November 26, 2002 (one pertaining to each of the two incomplete CDP application that were submitted) (**Exhibit 16**). Despite this, however, the materials required to complete the applications, as outlined in the letters, were never submitted and the applications were finally returned to Ms. Witter, the applicant listed on the applications, on September 18, 2003 (**Exhibit 17**). Ms. Witter and Mr. Richardson also failed to either pay the prescribed fine or execute a promissory note, as required under the settlement agreement.

### **Cease and Desist Order No. CCC-05-CD-08 and Restoration Order No. CCC-05-CD-05**

After thirteen years of repeated attempts by Commission staff to resolve the Coastal Act violations on the property, the violations remain, and as discussed below, continue to cause resource damage. Given the need to address this, Commission staff finally concluded that it was necessary to commence cease and desist and restoration order proceedings in an effort to finally compel removal of the extensive unpermitted development on the property and restoration of the severely impacted and extremely valuable habitat on the property.

On January 25, 2005, to ensure proper service, Commission staff contacted Mr. Richardson by telephone to confirm a valid address for Ms. Witter and Mr. Richardson. Mr. Richardson confirmed that he and Ms. Witter regularly accept mail at the 2100 McReynolds Road address and that they would both be present on the property to receive mail during the month of February 2005. Accordingly, on February 25, 2005, a Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings (NOI) was sent to Ms. Witter and Mr. Richardson at the 2100 McReynolds address (**Exhibit 18**). This letter was not returned to Commission staff as undeliverable. However, in an exercise of caution, Commission staff called Mr. Richardson on March 17, 2005 to confirm his receipt of the NOI. Mr. Richardson stated that he did not receive the NOI and a second copy, with adjusted deadlines reflecting the later mailing date, was sent to

Ms. Witter and Mr. Richardson on March 18, 2005 (**Exhibit 19**). After the NOI was resent, a Notice of Intent to Record a Violation of the Coastal Act (NOV NOI) was also sent to Ms. Witter and Mr. Richardson, via regular and certified mail, in accordance with Coastal Act Section 30812(a) (**Exhibit 20**).

During a March 18, 2005 telephone conversation with Commission staff, Mr. Richardson requested that all future correspondence to Ms. Witter and Mr. Richardson be directed to Peter Petrovsky. Mr. Richardson designated Mr. Petrovsky as the representative for Ms. Witter and Mr. Richardson and the agent for service of documents with respect to all Commission enforcement action concerning the property. On March 22, 2005, pursuant to Mr. Richardson's request, Commission staff contacted Mr. Petrovsky. Commission staff then sent a third copy of the NOI and a second copy of the NOVA NOI to Mr. Petrovsky on May 18, 2005, again extending the deadline for response a third time to allow for a twenty-day response period as provided by Section 13181(a) of the Commission Regulations(**Exhibit 21**).<sup>8</sup> During subsequent telephone conversations with Mr. Petrovsky, including but not limited to March 22, 2005, April 1, 2005, April 26, 2005, May 17, 2005, May 18, 2005, and June 8, 2005, and in a letter sent on May 18, 2005, Commission staff repeatedly informed him that the unpermitted development at the site violated the Coastal Act and stated that both cease and desist and restoration orders are necessary to facilitate removal of unpermitted development from the property and restoration of impacted areas.

Commission staff included a Statement of Defense (SOD) form with the numerous copies of the NOI sent to Ms. Witter, Mr. Richardson, and Mr. Petrovsky. As noted above, under the applicable regulations, violators have twenty days to respond to an NOI, which in this case was June 8, 2005, for the third NOI. Despite this, no SOD has been submitted.<sup>9</sup> The NOI provided the requisite twenty-day deadline for submittal of the SOD, adjusted depending upon when the copy was sent to consistently provide a full twenty-day response period. Furthermore, although the prescribed time period for submittal of a SOD elapsed, Commission staff sent a letter to Ms. Witter, Mr. Richardson, and Mr. Petrovsky on July 22, 2005, providing yet another opportunity to submit materials in response to the NOI above and beyond what is required under the Commission's regulations. The deadline for this final submittal was July 27, 2005. No SOD form was submitted on or before the deadline.

Ms. Witter and Mr. Richardson have had ample time to submit any defenses regarding the unpermitted development addressed in the proposed cease and desist and restoration orders. Commission staff first contacted Ms. Witter and Mr. Richardson to resolve the violations in 1992. They have had since at least May 18, 2005 (the date that the third NOI was sent) to respond specifically to the allegations in this proceeding, yet they failed to do so.

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<sup>8</sup> During the initial conversation with Mr. Petrovsky, Commission staff also notified Mr. Petrovsky of the potential for recordation of a Notice of Violation, as required by Coastal Act Section 30812(g).

<sup>9</sup> On June 3, 2005, Commission staff received copies of Mr. Petrovsky's files on this matter. No SOD form was submitted with the files.

The SOD form requirement serves an important function. (See, e.g., *Horack v. Franchise Tax Board* (1971) 18 Cal.App.3d 363, 368) (“Where administrative machinery exists for resolution of differences, such procedures must be “fully utilized and exhausted”). The Commission’s cease and desist hearings are “quasi-judicial.” Thus, if the Commission is to make findings of fact and conclusions at law in the form of an adopted Staff Report, Ms. Witter and Mr. Richardson must inform the Commission, precisely and in writing, which defenses they wish the Commission to consider. The SOD form has six categories of information that Ms. Witter and Mr. Richardson should have provided to the Commission: (1) facts or allegations contained in the cease and desist order or the notice of intent that are admitted by respondent; (2) facts or allegations contained in the cease and desist order or the notice of intent that are denied by respondent; (3) facts or allegations contained in the cease and desist order or the notice of intent of which the respondent has no personal knowledge; (4) facts and/or a description of any documents, photographs or other physical evidence that may exonerate the respondent; (5) any other information, statement, etc. that respondent desires to make; and (6) a listing of any documents, exhibits, declarations or other materials that are being attached by respondent to the statement of defense form.

The Commission should not be forced to guess which defenses Ms. Witter and Mr. Richardson want the Commission to consider and which defenses they may have raised informally prior to the hearing but now wish to abandon. Section 13181, subdivision (a) is specifically designed to serve this function of clarifying the issues to be considered and decided by the Commission. (See *Bohn v. Watson* (1954) 130 Cal.App.2d 24, 37 (“It was never contemplated that a party to an administrative hearing should withhold any defense then available to him or make only a perfunctory or ‘skeleton’ showing in the hearing...The rule compelling a party to present all legitimate issues before the administrative tribunal is required...to preserve the integrity of the proceedings before that body and to endow them with a dignity beyond that of a mere shadow-play”).)

Late addition:

On July 28, 2005 enforcement staff received a copy of a letter (apparently sent on July 27, 2005) from Sherman Stacey, on behalf of Ms. Witter and Mr. Richardson. This letter was apparently sent in lieu of a Statement of Defense. This letter does not raise any significant new issues or warrant alteration of the staff recommendation. In an attempt to be fully protective of Respondents’ rights, the letter is included as the last exhibit to this staff report. Several things should be noted with regard to the issues Mr. Stacey raises.

First, in his letter of July 27, Mr. Stacey requests a postponement of this matter for several reasons: because he was only lately retained in this matter and purportedly hasn’t had time to prepare fully, and because they would like to attempt some resolution of this matter. Although Mr. Stacey, according to his letter, has apparently not yet been retained by Ms. Witter to represent her with respect to these Orders, and therefore, does not have the apparent authority to request a continuance on her behalf, Commission staff notes that Mr. Stacey has apparently been retained by and represented Ms. Witter and Mr. Richardson for some years with regard to this matter, and in fact, has appeared as counsel on pleadings filed on their behalf at recently as the last two months. Enforcement staff has been in constant contact with the formally identified

representatives of Ms. Witter and Mr. Richardson and has repeatedly requested that they provide a timely Statement of Defense as required by the regulations. However, staff remains interested here as always in an amicable resolution, and plans to send Mr. Stacey a letter requesting that they submit a colorable settlement offer in the very near future to allow us evaluate whether settlement is in fact a viable option here, and if so, whether a postponement would be helpful to reach a settlement.

Second, Mr. Stacey raises a couple of points to which we have already responded in the staff report. He raises the issue of notice to Ms. Witter. As noted in the staff report, the Notice of Intent and other letters have been sent to the several addresses we have been assured are her correct addresses, and these letters in fact, have not been returned as undeliverable. In addition, Mr. Petrovsky was identified as her agent for service and he has also been sent copies of all relevant documents. Furthermore, Mr. Stacey states in his letter that he has had no contact with Ms. Witter, and in fact, he offers no support for his assertion that Witter has not received notice of these proceedings.

Mr. Stacey also questioned whether Mr. Richardson is a proper recipient of this order, since he no longer has legal title to the property. As noted herein, Mr. Richardson has performed development without a coastal development permit at the site, and therefore is subject to the terms of orders issued under Section 30810 and 30811 of the Coastal Act.

Finally, Mr. Stacey raises issues regarding the relevance of the 1998 Settlement Agreement to this administrative proceeding. Without here addressing any issues regarding that Settlement Agreement, we note that this Settlement Agreement did not even address all the unpermitted development at the site, and moreover, insofar as there is any overlap between the unpermitted development addressed in that Agreement and that addressed in these Cease and Desist and Restoration Orders, we have specifically drafted the Orders to be consistent with the Settlement Agreement.

#### **Notice of Violation No. CCC-05-NOV-08**

A Notice of Violation was recorded in this matter, in accordance with Coastal Act Section 30812. Ms. Witter, Mr. Richardson, and Mr. Petrovsky were provided notice of the potential for recordation of a Notice of Violation in this matter in compliance with all legal requirements, and chose not to object within the time period prescribed under Section 30812(b).<sup>10</sup> A Notice of Violation was recorded in the Los Angeles County Recorder's Office on June 17, 2005 (**Exhibit 22**).

#### **B. Description of Unpermitted Development**

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<sup>10</sup> Commission staff notified Ms. Witter and Mr. Richardson of the potential for recordation of a Notice of Violation in the NOI sent by certified and regular mail to the 2100 McReynolds address as well as to their second residence in Belize. Once Mr. Richardson designated Mr. Petrovsky as agent for service of documents in this matter, Commission staff provided oral notice to Mr. Petrovsky before sending him both the NOI, containing written notification of the potential for recordation, and the NOV NOI.

The unpermitted development located on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. (**Exhibit 23**, providing photographs of some of the unpermitted development on the property). The size of the property, the extremely large number of items of unpermitted development, and the topography and the canopy created by vegetated areas make generating a complete inventory of unpermitted development difficult. However, no CDPs have been obtained for any development on the property.<sup>11</sup> Therefore, the only development legally present at the site are the specific items the Commission previously determined to be vested, as discussed above in the Vested Rights Section of this report. Therefore, all additional development that is present on the property and not specified in the description of unpermitted development is also unpermitted and subject to the proposed orders.

### **Items of Unpermitted Development**

This section of the report will describe the different items of unpermitted development on the property. This inventory was compiled through examination of site visit photographs and aerial photographs of the property, and due to the extent of the unpermitted development and the size of the site and the continuing use and movement of unpermitted development occurring at the site, it may not represent an exhaustive list. Additional unpermitted development, not visible in the photographs, may exist on the property and is also subject to removal under the proposed orders.

The proposed orders will require Ms. Witter and Mr. Richardson to submit complete inventories of all development on the property and will allow Commission staff periodic access to the property, upon provision of sufficient notification to Ms. Witter and Mr. Richardson, to verify the inventory and to evaluate removal and restoration efforts. Removal of the following development and restoration of areas impacted by this development represent the minimum work required to bring the property into compliance with the resource protection policies of Chapter 3 of the Coastal Act. Any additional unpermitted development on the property must also be removed pursuant to the proposed orders and any areas impacted by the additional unpermitted development, or through removal activities, must be restored. Figures 1 - 4 are included for reference and provide an aerial view of the entire property (**Exhibits 24-27**).

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<sup>11</sup> CDP No. P-2-17-2706 authorized the construction of a 600 square-foot single-family residence on one of the three parcels created under the permit. However, according to the staff report prepared for the Commission meeting on the permit application, the residence was to be built on "parcel 3", which is identified as APN 4465-006-049. Ms. Witter does not own this parcel, and therefore, the residence approved in CDP No. P-2-17-2706 is not located on the property and is not at issue in this matter.

<u>Item of Unpermitted Development</u>	<u>Number of Items on the Property</u>
* Trailers/Mobile Homes	23
* Single-family residences	4
* Large garage	1
* Storage sheds	7
* Yert	1
* Outhouse	1
* Metal storage containers	4
* Lean-tos attached to trailers or motor homes	6
* Storage containers including metal drums	numerous
* Wooden and metal fences	3
* Concrete structures	2
* Stables, containing pens, barns, and horses	4
* Power and telephone lines	numerous
* Roads and driveways	numerous
* Abandoned vehicles, including cars, buses, trucks, and boats	numerous
* Trash and debris, including metal and wood construction materials, vehicle parts, metal drums, and glass	scattered; 5 large deposit areas
* Construction equipment	1 bulldozer
* Water Wells and Tanks	numerous

#### **Four Attempted Unpermitted Subdivisions**

Subdivision clearly constitutes development, and is specifically included in the definition of development in Coastal Act Section 30106. The property consists of seven purported parcels, three of which are the product of an attempted unpermitted subdivision and are subject to merger under this order in an effort to bring the property into compliance with existing CDPs and the resource protection policies of Chapter 3 of the Coastal Act and the 1986 Malibu/Santa Monica Mountains Land Use Plan (SMM LUP), as discussed below. The property only has four legal parcels under the Coastal Act.



On April 10, 1978, the Commission conditionally approved CDP No. P-2-17-78-2706, authorizing the subdivision of a 15.33-acre parcel identified into three, approximately 5-acre parcels (**Exhibit 28**). The Commission, to address its concerns regarding increased residential density on the parcels and in the surrounding area, imposed a special condition requiring recordation of a deed restriction limiting development on the parcels to one-single family residence per parcel, and prohibiting future subdivision of the parcels. The deed restriction was recorded, with Mr. Richardson as a signatory (**Exhibit 29**).

Parcel Map No. 7155 was recorded pursuant to CDP No. P-2-17-78-2706, creating three 5-acre parcels identified as APNs 4465-006-047, 4465-006-048, and 4465-006-049. A current Assessor's Parcel Map indicates that one of the original 5-acre parcels, APN 4465-006-048, has been illegally subdivided into two parcels: APN 4465-006-054, a 4.32-acre parcel; and 4465-006-055, a .14-acre parcel (see **Exhibit 2**). This subdivision was not approved under P-2-17-78-2706, and neither Ms. Witter nor Mr. Richardson applied for or obtained an additional CDP for the subdivision. Therefore, the creation of 4465-006-054 and 4465-006-055 constitutes an attempted unpermitted subdivision undertaken in violation of the Coastal Act, the existing CDP, and the deed restriction, recorded pursuant to the CDP as a means of curtailing the density of development in the area. The proposed orders will direct Ms. Witter and Mr. Richardson to merge parcels to return the portion of the property to the original parcel configuration approved by the Commission.

On March 12, 1980, Chris Brookes and Richard Brookes Jr. submitted a CDP application to subdivide a 39.41-acre parcel, identified as APN 4464-024-004, into three 12-acre parcels and one 6-acre parcel. Upon his request, Mr. Richardson was added to the application as a co-applicant. On August 25, 1982, the Commission approved CDP No. 5-82-377, authorizing the subdivision of the parcel into three parcels (see **Exhibit 15**). The applicants, including Mr. Richardson, recorded Parcel Map Waiver No. 7154 on March 8, 1984, in accordance with the CDP (**Exhibit 30**).

A current Assessor's Parcel Map shows that, in addition to the three parcel-subdivision that was authorized under CDP No. 5-82-337, the original parcel, APN 4464-024-004, has been subject to three attempted unpermitted subdivisions, resulting in division of the original parcel into six parcels, three illegally created (see **Exhibit 2**). This illegal subdivision will potentially result, if the parcels are not restored to the legal configuration, in a 3-fold increase in development potential of this property and, consequently, a 3-fold increase of coastal impacts.

The proposed orders will direct Ms. Witter and Mr. Richardson to merge APNs 4464-024-020 and 4464-024-021, APNs 4464-024-022 and 4464-024-023, and APNs 4465-006-054 and 4465-006-055, to restore the approved parcel configuration.<sup>12</sup> The proposed orders will also direct Ms. Witter and Mr. Richardson not to transfer any portion of the property until the parcel configuration has been returned to what was approved under existing CDPs. The approved parcel configuration will reduce the amount of development that can occur on the property, the

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<sup>12</sup> The final parcel, created through the attempted unpermitted subdivision, APN 4464-024-019, is currently owned by Michael Burrett.

very concern that caused the Commission to specifically condition approval of the existing CDPs mentioned above on fewer subdivisions and the recordation of a deed restriction as a condition of CDP No. P-2-17-78-2706. In addition, the proposed orders will protect potential innocent purchasers while merger takes place.

**C. Basis for Issuance Orders**

**1. Basis for Issuance of Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in Coastal Act Section 30810, which states, in relevant part:

*(a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person ... to cease and desist.*

*(b) The cease and desist order may be subject to such terms and conditions as the commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division.*

Development is defined in Coastal Act Section 30106, which states:

*“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes. (emphasis added)*

The activities conducted on the property clearly constitute development as defined in Coastal Act Section 30106 and, as such, are subject to the following permit requirements provided in Coastal Act Section 30600(a):

*(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency,*

*any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone... shall obtain a coastal development permit.*

No CDP was obtained for the development on the property, as required under Coastal Act Section 30600(a). In addition, some of the unpermitted development violates existing CDPs, as discussed below. Consequently, the Commission is authorized to issue CCC-05-CD-08 pursuant to Section 30810(a)(1). The proposed Cease and Desist Order will direct Ms. Witter and Mr. Richardson to: 1) cease and desist all construction and/or maintenance of development activities on the property that are unpermitted and subject to Coastal Act permit requirements, 2) remove all unpermitted development from the subject property or submit a CDP to retain or remove development existing on the property at the time of the settlement agreement while removing development that has occurred since the settlement agreement, 3) restore areas of the property that have been negatively impacted by unpermitted development, to the condition they were in before Coastal Act violations occurred, and 4) record three mergers to restore all parcels on the property to the configuration that existed before Coastal Act violations occurred.

## **2. Basis for Issuance of Restoration Order**

The statutory authority for issuance of this Restoration Order is provided for in Coastal Act Section 30811, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a.] the development has occurred without a coastal development permit from the commission..., [b.] the development is inconsistent with this division, and [c.] the development is causing continuing resource damage.*

### **a. Development Has Occurred Without a Coastal Development Permit**

As previously presented in Section D.1. of this report, Commission staff has verified, and Ms. Witter and Mr. Richardson do not dispute, that the cited development on the property was conducted without a CDP. As noted above, in 1998, the Commission found that none of the development covered by these proposed orders was vested, and therefore none of this development is exempt from the permit requirements of the Coastal Act. The following paragraphs provide evidence that the unpermitted development is inconsistent with the Coastal Act and is causing continuing resource damage.

### **b. Unpermitted Development Also Violates Existing Permits**

As discussed above, the Commission approved two CDPs authorizing subdivisions of the property. Additional, attempted, unpermitted subdivisions have occurred in violation of these existing CDPs. Furthermore, a special condition of CDP No. P-2-17-78-2706 required the recordation of a deed restriction limiting development on the parcels to one single-family residence per parcel and prohibiting future subdivision of the parcels. The attempted, unpermitted subdivision of APN 4465-006-048 occurred, creating APNs 4465-006-054 and 4465-006-055 in violation of the existing CDP. In addition, all of the unpermitted development

on the land identified as APNs 4465-006-054 and 4465-006-055 is in violation of the deed restriction.

**b. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development is inconsistent with the following resource protection policies of the Chapter 3 of the Coastal Act:

**i. Section 30240 - Environmentally Sensitive Habitat Areas**

Environmentally Sensitive Habitat Areas (ESHA) are defined by Coastal Act Section 30107.5 as:

*... area[s] in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The property is surrounded by the Santa Monica Mountains National Recreation Area (SMMNRA), which comprises the largest and most pristine example of a Mediterranean ecosystem on the Southern California coast. This ecosystem is rare and valuable because of the high level of biodiversity it supports. Coastal Commission staff biologist Dr. John Dixon has viewed aerial and site visit photographs of the site and has confirmed that the area is predominantly native mixed chaparral with riparian oak woodlands common to the Santa Monica Mountains' Mediterranean ecosystem, and that these native habitats meet the definition of ESHA under the Coastal Act Section 30107.5 (**Exhibit 31**). Although significant vegetation removal has taken place on the property and vegetation has been further degraded by unpermitted development activities, the property still supports patches of relatively undisturbed native habitat. The chaparral on the property is part of a much larger, contiguous area of native vegetation.

Coastal Act Section 30240(a) states:

*Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

As explained above in Section B, three attempted unpermitted subdivisions have occurred on the property, resulting in the creation of three illegal parcels, thus, increasing the development potential of the property 3-fold. The increased intensity and density of use - vegetation removal, grading, and placement of structures, septic systems, water tanks and other infrastructure to support the increased development of the property - would cause resource impacts approximately three times greater than would otherwise occur if only the three legal lots were developed.

In addition, unpermitted grading and vegetation removal has degraded or eradicated ESHA on the property and the placement of structures has discouraged regrowth of the vegetation (see

**Exhibit 23).** The reduction in the amount and quality of the habitat is significant, given the value of the habitat and the large area affected.

Coastal Act Section 30240(b) states:

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.* (emphasis added)

As previously stated, the property lies immediately adjacent the Castro Crest area of the SMMNRA, a popular public recreation destination.<sup>13</sup> This region is of great public importance, as it provides large contiguous areas of native vegetation and an extensive network of publicly-owned lands containing open space areas, vistas, and public trails. Contaminated runoff and sedimentation from unpermitted development on the property impacts the water quality of adjacent and surrounding public parklands. Moreover, grading, vegetation removal, and the placement of structures in areas of high elevation on the property degrade the scenic quality of adjacent and surrounding parklands. Furthermore, contamination from unregulated waste discharges on the property poses a public health risk (see **Exhibits 5**).

Ms. Witter and Mr. Richardson have not only failed to protect the ESHA on the property, they have removed a large amount of it. The placement of structures has hindered regeneration of vegetation (see **Exhibit 23**). The unpermitted development has impacted, and continues to impact, valuable and significant habitat, and is therefore inconsistent with Coastal Act Section 30240(a). Furthermore, the property lies immediately adjacent to a National Park, which is a popular visitor destination because of the beautiful, pristine habitat. Ms. Witter and Mr. Richardson have failed to prevent impacts to the water and soil quality as well as scenic value of these resources, and the unpermitted development on the property is incompatible with the continuance of adjacent recreation areas. Therefore, the unpermitted development on the property is inconsistent with Coastal Act Section 30240(b).

In addition to being inconsistent with Coastal Act Section 30240(a), the unpermitted development is inconsistent with the resource protection policies of the SMM LUP. These policies include:

P68      Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resources dependent use.

Unpermitted development has significantly degraded the habitat on the property and water quality impacts from contaminated runoff will impact adjacent and surrounding ESHA. No

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<sup>13</sup> The property is also located less than five miles from the Malibu Creek State Park, another popular visitor destination in the area.

resource dependent uses have been proposed for the property. Much of the unpermitted development, including placement of residences, trailer and mobile homes, and creation of private access roads and driveways constitutes residential development, which is specifically not a resource dependent use under the SMM LUP.

- P84 In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:
- Structures should be clustered.
  - Grading for access roads and driveways should be minimized...
  - Designate building and access envelopes on the basis of site inspection to avoid particularly erodible areas...

Although the property consists of seven purported parcels, only four are legal parcels. However, even if all of the parcels were legal, the development does not conform to the Coastal Act or the SMM LUP. Furthermore, development is not even limited to seven residential structures and is not clustered to reduce impacts to ESHA. Instead, there are approximately four residential structures and twenty-three trailers or mobile homes used as residences, scattered throughout the property on multiple graded pads, which required significantly more vegetation removal than clustered development (see **Exhibit 23**). Additional unpermitted development is not clustered around these residential structures and graded areas, thereby requiring additional vegetation removal and grading. Numerous roads and driveways were constructed on the property to facilitate access to and movement between the scattered development (see **Exhibit 23**). Additionally, scattered development on the property required more telephone and electrical lines than clustered development would have.

The main access road to the property is McReynolds Road. The unpermitted development is not situated close to McReynolds Road, and therefore, numerous, long, private access roads from McReynolds Road through ESHA to the development are required. Increased vegetation removal was necessary to create the roads. If these roads were legal roads, more vegetation would be removed from either side of each road in order to comply with Los Angeles County Fire Department fuel modification standards. Moreover, increased traffic to outlying development will prevent regeneration of vegetation and will continually compact soil, increasing surface runoff.

Attachment 2 of the LUP is a map of “Sensitive Environmental Resources in the Malibu Coastal Zone area (see **Exhibit 3**). According to the map, the property lies within a Wildlife Migration Corridor, which constitutes a Significant Environmental Area. The significance of these areas is stated in LUP Section 3.i.:

*This [Wildlife Migration Corridor] designation was suggested originally by the Department of Fish and Game for the purpose of linking the Significant Watersheds into an unbroken chain of resource protection areas extending nearly the length of the Malibu/Santa Monica Mountains coastal zone. ... Standards for development are the same as those recommended for Significant Watersheds...*

The development standards in the LUP for land located within Significant Watersheds, and therefore, for Wildlife Migration Corridors, are stated in Attachment 3 of the LUP (**Exhibit 32**). These standards mandate clustered development, minimal grading, and site access roads of no longer than the lesser of 300 feet or 1/3 the depth of the parcel. Unpermitted development on the property is not clustered, extensive grading has occurred, and many if not all of the access roads on the property exceed the prescribed maximum length.

## **ii. Section 30231 - Water Quality**

Coastal Act Section 30231 states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams. (emphasis added)*

The Los Angeles County Department of Health Services has not reviewed plans or approved any septic systems on the property. The residents of the unpermitted trailers and motor homes on the property discharge their solid and liquid wastes either directly onto the ground or barely underground, using basic drainage tubing buried to a shallow depth, without any permits (see **Exhibit 5**). These waste materials leach into the environment and potentially contaminating the groundwater, surface water runoff, and the blue line stream that bisects the property. The contamination has the clear potential to harm wildlife on the property, adjacent private properties, and public parklands, and to pose a public health risk.

In addition, unpermitted grading and vegetation removal on the property, especially the removal of native chaparral habitat, increases erosion. Increased runoff resulting from compacting soil to create roads and pads also increases erosion. The sedimentation resulting from increased erosion on the property impacts the water quality of the blue-line stream running through the property as well as the surrounding coastal waters. The contamination and increased erosion resulting from the unpermitted development is inconsistent with Coastal Act Section 30231.

## **iii. Section 30251 - Scenic and Visual Qualities**

Coastal Act Section 30251 states, in relevant part:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, [and] to be visually compatible with the character of surrounding areas.*

The property contains valuable scenic qualities that are continually degraded by the presence of the unpermitted development found throughout the 43-acre property. The property is located immediately adjacent to the Castro Crest area of the SMMNRA, one of the most visible landmarks in the Santa Monica Mountains and a popular destination for the public. The property is located off of Latigo Canyon Road, a major route used by the public to access the extensive network of state and national parks in the surrounding areas. Much of these surrounding areas are covered with native vegetation – chaparral, and coastal sage scrub. Unpermitted grading and creation of unpermitted roads and driveways has altered the natural landforms on the property and the massive amounts of unpermitted development scattered throughout the property are not visually compatible with the character of surrounding areas.

Unpermitted roads, driveways, graded pads, and other unpermitted development is visible from nearby trails. This unpermitted development adversely impacts the scenic and visual resources of the property as viewed from nearby parklands. The unpermitted development on the property is therefore inconsistent with Coastal Act Section 30251.

#### **iv. Section 30253 – Minimization of Adverse Impacts**

The unpermitted development is also inconsistent with Coastal Act Section 30253, which provides in relevant part:

*New development shall:*

*(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

*(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs...*

*(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.*  
(emphasis added)

Trailers, mobile homes, and other unpermitted development on the property are located in designated flood hazard areas. In addition, electrical lines are located in designated high fire hazard areas. Therefore, the unpermitted development does not minimize risks, as required under Section 30253(1).

Unpermitted grading activities, creating pads and roads, and unpermitted vegetation removal has resulted in large areas of bare soil (see **Exhibit 23**). These areas will erode more quickly than vegetated areas. Therefore, the unpermitted development also fails to satisfy Section 30253(2). Ms. Witter and Mr. Richardson have undertaken no proactive revegetation of graded areas on the site to control erosion or to stabilize disturbed areas.



As stated above, the SMMNRA is a popular visitor destination point for recreational uses. Its Mediterranean ecosystem is rare and valuable because of the biodiversity it supports. Areas of native vegetation, such as those found on the property, meet the definition of ESHA stated in Coastal Act Section 30107.5. Ms. Witter and Mr. Richardson have failed to protect the property, which is part of this special community, thereby also failing to satisfy Section 30253(5).

**c. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing continuing resource damage, as defined in Section 13190 of the Commission's regulations:

*'Continuing', when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order.*

*'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.*

*'Damage' means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development. (emphasis added)*

As of the date of this report, the unpermitted development continues to exist at the subject property, and, as described above, continues to cause adverse impacts to ESHA, water and soil quality, and scenic resources that are protected under Chapter 3 of the Coastal Act. Thus, the resource damage is "continuing" as required by Coastal Act Section 30811, enabling the Commission to issue Restoration Order CCC-05-RO-05.

**3. Provisions of CCC-05-CD-08 and CCC-05-RO-05**

The 43-acre property contains extensive amounts of unpermitted development, some of which has existed on the property for years. The resulting resource impacts to the property and to the surrounding Santa Monica Mountains area are inconsistent with the resource policies of Chapter 3 of the Coastal Act. Given the long history of this case, the magnitude of the violations, the extent of resource damage caused by unpermitted development on the property, issuance of the proposed orders is essential to resolving the violations.

**D. California Environmental Quality Act (CEQA)**

The Commission finds that the issuance of Commission Cease and Desist Order CCC-05-CD-08 and Restoration Order CCC-05-RO-05 to compel removal of the unpermitted development and restoration of the property to the condition that existed prior to the unpermitted development, is exempt from any applicable requirements of the California Environmental Quality Act (CEQA)

of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist Order and Restoration Order are exempt from the requirement of preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of the CEQA Guidelines.

**E. Findings of Fact**

1. Madalon Witter owns the 43-acre property located off of McReynolds Road in the Santa Monica Mountains area of unincorporated Los Angeles County, identified as APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055.

2. Douglas Richardson previously owned the property and conveyed title to Madalon Witter on December 8, 1987. He undertook unpermitted development on the site, and he continues to manage the property and represents Ms. Witter with regard to Commission enforcement matters.

3. Unpermitted development exists on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks.

4. No CDP was applied for or obtained prior to the undertaking any of the large number of items of development, in violation of Coastal Act Section 30600(a).

5. Some of the unpermitted development is located on parcels 4465-006-054 and 4465-006-055, covered by a CDP, a special condition of which prohibits future development, and by a deed restriction recorded pursuant to the CDP. The unpermitted development on this parcel is a violation of both the permit and the recorded deed restriction.

6. On May 19, 1992, Commission staff received a report that grading and vegetation clearance had occurred on the property. Additional reports of unpermitted development followed.

7. Staff obtained a court-issued inspection warrant in order to conduct a site visit of the property on October 27, 1993. An additional site inspection was conducted on October 31, 2002, confirming the continuing presence of the cited unpermitted development on the property.

8. Commission staff made repeated attempts to resolve this matter administratively, as evidenced by correspondence to Ms. Witter and Mr. Richardson, dated June 18, 1992, August 3, 1992, September 9, 1992, March 5, 1993, January 12, 1993, and June 6, 1993.

8. The Commission issued CCC-93-CD-03 on November 16, 1993, directing Ms. Witter and Mr. Richardson to apply for a CDP to remove or retain the unpermitted development on the property. CCC-93-CD-03 was rescinded on February 5, 1997.

9. The Executive Director authorized the issuance of a Notice of Intent to Commence Cease and Desist Proceedings on February 18, 1997. Commission staff discontinued these proceedings due to the fact that Ms. Witter, Mr. Richardson, and the Commission entered into a settlement agreement on October 23, 1998.

10. The 1998 settlement agreement directed Ms. Witter and Mr. Richardson to submit CDP applications to remove or retain the unpermitted development on the property. In addition, the agreement required Ms. Witter and Mr. Richardson to pay a \$15,000 fine or submit a promissory note secured by a deed of trust.

11. Ms. Witter and Mr. Richardson submitted incomplete CDP applications on February 23, 1999 and October 29, 2002. The first submittal did not constitute a formal CDP application. The second submittal was inadequate, and Commission staff requested additional materials on November 26, 2002. The materials were not received and the CDP applications were finally returned to Ms. Witter on September 18, 2003.

12. Ms. Witter and Mr. Richardson did not submit complete CDP applications, the prescribed payment, or the promissory note.

13. On February 25, 2005, the Executive Director issued an NOI, including a SOD form, for the proposed orders. The NOI was resent on March 18, 2005. The NOV NOI was also sent on March 18, 2005.

14. On March 18, 2005, Mr. Richardson designated Mr. Petrovsky as the agent for Ms. Witter and Mr. Richardson in this matter and as the agent for service of documents.

15. Commission staff sent the NOI, including an SOD form, and the NOV NOI to Mr. Petrovsky on May 18, 2005. No SOD has been submitted.

16. The unpermitted development listed in the Notice of Intent and addressed in this report remains on the property.

17. The unpermitted development is inconsistent with Chapter 3 of the Coastal Act, including Sections 30240, 30231, 30251, and 30253.

18. The unpermitted development is causing continuing resource damages.

19. Substantial evidence, as that term is used in Coastal Act Section 30812, exists that a Coastal Act violation has occurred.

20. Commission staff made Ms. Witter and Mr. Richardson aware of the possibility of the recordation of a Notice of Violation in this matter, as required by Coastal Act Section 30812(g), through the NOI dated February 25, 2005. The Executive Director notified Ms. Witter and Mr. Richardson of his intent to record a Notice of Violation pursuant to Coastal Act Section 30812 in the NOV NOI, dated March 18, 2005.

21. Once Mr. Richardson designated Mr. Petrovsky as the agent in this matter, Commission staff contacted Mr. Petrovsky and notified him of the potential for the recordation of a Notice of Violation. Subsequent notification occurred on April 1, 2005, May 18, 2005, May 16, 2005, June 8, 2005, The NOV NOI was sent to Mr. Petrovsky on May 18, 2005.

22. No objection to the recordation of a Notice of Violation in this matter was submitted, and a Notice of Violation was recorded in Los Angeles County on June 17, 2005.

## **CEASE AND DESIST ORDER CCC-05-CD-08, Witter/Richardson**

Pursuant to its authority under Public Resource Code Section 30810, the California Coastal Commission hereby orders and authorizes Madalon Witter and Douglas Richardson (hereinafter referred to as “Respondents”) to cease and desist from conducting or maintaining unpermitted development on the subject property by complying with the following:

1. Immediately cease and desist from engaging in any further development on the property not authorized by a coastal development permit.
2. Within 45 days of issuance of this Order, Cease and Desist from using, occupying, leasing or renting any unpermitted structures on the property.
3. Plans, Submittals, and Work to be Performed

### **A. Inventories of Development and Disturbed Areas**

Within 30 days of the issuance of this Order, Respondents shall submit comprehensive inventories of all development and disturbed areas on the property for review and approval by the Executive Director. The inventories of development must, at an absolute minimum, provide the locations of each item of vested development, according to the Vested Rights Determination made by the Commission on August 11, 1998, and all unpermitted development listed in the attached document entitled “Staff Report and Findings for Cease and Desist Order and Restoration Order”. The inventory of disturbed areas shall provide all locations of grading activity and vegetation clearance on the property, which constitutes unpermitted development and is subject to this Order. Any additional unpermitted development not specified in the attached document entitled “Staff Report and Findings for Cease and Desist Order and Restoration Order” but located on the property must be included in these inventories. The inventories shall provide enough visual and verbal descriptive information to enable a person who is unfamiliar with the site to understand the type and location of each item of development, vested and unpermitted, as well as the location of disturbed areas on the property.

If Respondents choose to utilize Option 2, as explained below in Section B.2 of this Order, the inventories shall indicate (and include evidence that demonstrates to the satisfaction of the Executive Director) whether or not the unpermitted development existed on the property at the time of the execution of the October 23, 1998 settlement agreement was reached between the Commission, Ms. Witter, and Mr. Richardson. The inventory shall clearly state that Option 2 has been chosen.

### **B. Removal Plan**

- i) Option 1: Removal of All Unpermitted Development

Within 30 days of approval of the inventories by the Executive Director, Respondents shall submit a plan, for review and approval by the Executive Director, to remove all unpermitted development on the property not demonstrated to be in existence prior to the settlement agreement. Respondents shall also have the option of including in this removal plan all unpermitted development on the site. Within 10 days of the approval of the removal plan, Respondents shall begin removal of the unpermitted development, in accordance with the terms and schedule provided in the approved removal plan, subject to any extensions provided by the Executive Director pursuant to Section IX of this Order. The removal plan shall be prepared by a certified civil engineer or other qualified professional, licensed by the State of California. The plan shall contain the following provisions:

- (a) Detailed description of removal activities.
- (b) Timetable for removal activities.
- (c) Mechanized Equipment.
  - (i) Type of mechanized equipment required for removal activities;
  - (ii) Length of time equipment must be used;
  - (iii) Routes utilized to bring equipment to and from the property;
  - (iv) Storage location for equipment when not in use during removal process;
  - (v) Hours of operation of mechanized equipment;
  - (vi) Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- (d) Measures to be taken to protect water quality.
- (e) Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility.
- (f) If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the plan for approval within 10 days of the notification.
- (g) Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved plan.

ii) Option 2: Submittal of CDP Application and Removal of “New” Development

The Executive Director’s approval of the inventories will notify Respondents regarding what unpermitted development the Executive Director has determined existed at the time of the execution of the Settlement Agreement and that development which did not exist on the property until after the execution of the Settlement Agreement.

a) Submittal of CDP Application and Removal of Denied Development

Within 30 days of notification by the Executive Directors pursuant to this section of the Order, Respondents have the option of submitting a complete CDP application to retain or remove only development which was existing on the property at the time of the Settlement Agreement for which Respondents want to apply under this section. Within 20 days after the Commission acts on the CDP application, Respondents shall submit plans for removal of all development that was denied by the Commission in that action. The removal plan will contain the elements outlined in Section 3.b.i of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

b) Removal of Development if Respondents Fail to Meet CDP Conditions

Within 60 days after the Commission acts on the CDP application, if the Commission approved the application subject to conditions that must be met prior to issuance of the permit, if Respondents have not complied with all such conditions, Respondents shall submit plans for removal of all the unpermitted development that was conditionally approved in the Commission’s action. The removal plan will contain the elements outlined in Section 3.b.i of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

c) Removal of Post-1998 Development or Development Not Included in CDP Application

Any unpermitted development for which Respondents do not apply for with a complete and timely CDP application or which has not been demonstrated to predate the 1998 settlement agreement shall be removed under Option 1 in Section B.1 of this Order. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify

Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

C. Removal Completion Report

Within 20 days of the completion of removal of all new unpermitted development, all unpermitted development for which Respondents did not chose to apply for with a CDP application, all unpermitted development denied by the Commission in an action on a CDP application filed according to Section B.2 of this Order, and all unpermitted development that was authorized but where the conditions necessary for issuance of the permit were not met within 60 days of the Commission's action on the permit application, Respondents shall submit, for review and approval by the Executive Director, a report documenting removal activities and confirming complete removal of unpermitted development as specified above in this section of the Order. The report shall include a site plan prepared by a licensed surveyor, showing all development retained on the property after removal is completed. The report shall also include photographs of removal activities being undertaken on the property as well as photographs of the property after removal was completed, marked to correspond to the inventories submitted pursuant to Section A of this Order.

D. Modifications and/or Additions Requested by the Executive Director

If the Executive Director determines that any modifications or additions to the inventories, the CDP application, or the removal plan are necessary, including submittal of additional evidence as to when unpermitted development activities were conducted on the property, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the item for approval within 10 days of the notification.

If the Executive Director determines that removal was inadequate, notice will be provided to Respondents outlining the deficiencies and the steps required to complete removal, and a time schedule for additional removal efforts. Respondents shall commence additional removal as required and shall complete removal according to the time schedule provided.

4. Cease and Desist from maintaining as separate parcels the property identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4465-006-054, and 4465-006-055. In addition, cease and desist from any attempt to transfer as separate parcels, the property identified as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4465-006-054, and 4465-006-055, until the Executive Director has determined that all appropriate actions have been taken to effectuate and record mergers to restore the original, approved parcel configuration of the property consisting of only four separate parcels, as set forth in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order" (hereafter "approved parcel configuration").



Within 45 days of issuance of this Order submit for the review and approval of the Executive Director all documents necessary to effectuate merger of the parcels identified as APNs 4464-024-020 and 4464-024-021, 4464-024-022 and 4464-024-023, and 4465-006-054 and 4465-006-055 so they are recombined with adjacent property to restore the original parcel configuration and to establish that the forty-three acres subject to this Order consists of only four separate parcels.

Within 30 days of Executive Director approval of the documents: (1) submit copies of the documents recorded to effectuate the mergers; (2) take all actions required to cause the records of the County Assessor to reflect the mergers.

## **I. Persons Subject to the Order**

Persons subject to this Cease and Desist Order are Respondents, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

## **II. Identification of the Property**

The property that is subject this Order is described as follows:

Approximately 43 acres, located within a wildlife corridor and containing a USGS-recognized blue-line stream as wells as environmentally sensitive chaparral, oak woodlands, and riparian oak woodland habitat (APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055).

## **III. Description of Unpermitted Development**

Unpermitted development located on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. Such unpermitted development does not include the development for which the Commission determined there is a vested right in its decision dated August 11, 1998.

## **IV. Commission Jurisdiction and Authority to Act**

The Coastal Commission has jurisdiction to take enforcement action to remedy the Coastal Act violations on the property due to the fact that the property lies within the Coastal Zone, in an unincorporated area of Los Angeles County, not covered under a certified Local Coastal

Program. The Commission issues this order pursuant to its authority under Coastal Act Section 30810.

#### **V. Effective Date and Terms of the Order**

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

#### **VI. Submittal of Documents**

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission  
Attn: Christine Chestnut  
45 Fremont St., Suite 2000  
San Francisco, CA 94105-2219.

with a copy sent to:  
California Coastal Commission  
Attn: Pat Veasart  
89 S. California Street Suite 200  
Ventura, CA 93001-2801

#### **VII. Findings**

The Order is issued on the basis of the findings adopted by the Commission at the August 2005 hearing, as set forth in the attached document entitled "Staff Report and Findings for Cease and Desist Order and Restoration Order.

#### **VIII. Compliance Obligation**

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, under Coastal Act Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

#### **IX. Extension of Deadlines**

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

#### **X. Site Access**

Respondents shall provide access to the property, at all reasonable times, including when work is being conducted pursuant to this order, for Commission staff and any agency having jurisdiction over the work being performed under this order. Commission staff shall provide 24-hour notice before entering the property. Nothing in this order is intended to limit in any way the right of entry or inspection that any agency may otherwise have be operation of any law.

#### **XI. Modifications and Amendments to this Consent Order**

Except as provided in Section IX of this order, this order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

#### **XII. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

#### **XIII. Government Liability**

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities required and authorized under this Cease and Desist Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order.

#### **XIV. Successors and Assigns**

This Cease and Desist Order shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of Respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

#### **XV. No Limitation on Authority**

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Cease and Desist Order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf  
of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

## **RESTORATION ORDER CCC-05-RO-05, Witter/Richardson**

Pursuant to its authority under Public Resource Code Section 30811, the California Coastal Commission hereby orders and authorizes Madalon Witter and Douglas Richardson (hereinafter referred to as “Respondents”) to restore the property as directed by this order to the condition it was in prior to the undertaking of the unpermitted development activity that is the subject of this order. Accordingly, the persons subject to this order shall fully comply with the following conditions:

### **A. Inventories of Development and Disturbed Areas**

Within 30 days of the issuance of this Order, Respondents shall submit comprehensive inventories of all development and disturbed areas on the property for review and approval by the Executive Director. The inventories of development must, at an absolute minimum, provide the locations of each item of vested development, according to the Vested Rights Determination made by the Commission on August 11, 1998, and all unpermitted development listed in the attached document entitled “Staff Report and Findings for Cease and Desist Order and Restoration Order”. The inventory of disturbed areas shall provide all locations of grading activity and vegetation clearance on the property, which constitutes unpermitted development and is subject to this Order. Any additional unpermitted development not specified in the attached document entitled “Staff Report and Findings for Cease and Desist Order and Restoration Order” but located on the property must be included in these inventories. The inventories shall provide enough visual and verbal descriptive information to enable a person who is unfamiliar with the site to understand the type and location of each item of development, vested and unpermitted, as well as the location of disturbed areas on the property.

If Respondents choose to utilize Option 2, as explained below in Section B.2 of this Order, the inventories shall indicate (and include evidence that demonstrates to the satisfaction of the Executive Director) whether or not the unpermitted development existed on the property at the time of the execution of the October 23, 1998 settlement agreement was reached between the Commission, Ms. Witter, and Mr. Richardson. The inventory shall clearly state that Option 2 has been chosen.

### **B. Removal Plan**

#### **1) Option 1: Removal of All Unpermitted Development**

Within 30 days of approval of the inventories by the Executive Director, Respondents shall submit a plan, for review and approval by the Executive Director, to remove all unpermitted development on the property not demonstrated to be in existence prior to the settlement agreement. Respondents shall also have the option of including in this plan all unpermitted development on the site. Within 10 days of the approval of the removal plan, Respondents shall begin removal of the unpermitted development, in accordance with the terms and schedule provided in the approved removal plan, subject to any extensions provided by the Executive Director pursuant to Section IX of this Order. The removal plan shall be prepared by a certified

civil engineer or other qualified professional, licensed by the State of California. The plan shall contain the following provisions:

- a) Detailed description of removal activities.
- b) Timetable for removal activities.
- c) Mechanized Equipment.
  - i) Type of mechanized equipment required for removal activities;
  - ii) Length of time equipment must be used;
  - iii) Routes utilized to bring equipment to and from the property;
  - iv) Storage location for equipment when not in use during removal process;
  - v) Hours of operation of mechanized equipment;
  - vii) Contingency plan in case of a spill of fuel or other hazardous release from use of mechanized equipment that addresses clean-up and disposal of the hazardous materials and water quality concerns;
- d) Measures to be taken to protect water quality.
- e) Disposal site for removed development. The site must be a licensed disposal facility located outside of the Coastal Zone. Any hazardous materials must be transported to a licensed hazardous waste disposal facility. If a disposal location lies within the Coastal Zone and is not an existing sanitary landfill, a coastal development permit shall be required.
- f) If the Executive Director determines that any modifications or additions to the submitted plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the plan for approval within 10 days of the notification.
- g) Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved plan.

2) Option 2: Submittal of CDP Application and Removal of “New” Development

The Executive Director’s approval of the inventories will notify Respondents regarding what unpermitted development the Executive Director has determined existed at the time of the

execution of the Settlement Agreement and that development which did not exist on the property until after the execution of the Settlement Agreement.

a) Submittal of CDP Application and Removal of Denied Development

Within 30 days of notification by the Executive Directors pursuant to this section of the Order, Respondents have the option of submitting a complete CDP application to retain or remove only development which was existing on the property at the time of the Settlement Agreement for which Respondents chose to apply for with a CDP application under this Section. Within 20 days after the Commission acts on the CDP application, Respondents shall submit plans for removal of all development that was denied by the Commission in that action. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

b) Removal of Development if Respondents Fail to Meet CDP Conditions

Within 60 days after the Commission acts on the CDP application, if the Commission approved the application subject to conditions that must be met prior to issuance of the permit, if Respondents have not complied with all such conditions, Respondents shall submit plans for removal of all the unpermitted development that was conditionally approved in the Commission's action. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

c) Removal of Post-1998 Development or Development Not Included in CDP Application

Any unpermitted development for which Respondents do not apply for with a complete and timely CDP application or which has not been demonstrated to predate the 1998 settlement agreement shall be removed under Option 1 in Section B.1 of this Order. The removal plan will contain the elements outlined in Section 3.b of this Order. If the Executive Director determines that any modifications or additions to the submitted removal plan are necessary, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the removal plan for approval within 10 days of the notification. Removal shall commence no later than 10 days after the approval of the removal plan by the Executive Director. Removal shall be completed according to the time schedule provided in the approved removal plan.

C. Removal Completion Report

Within 20 days of the completion of removal of all new unpermitted development, all unpermitted development for which Respondents did not chose to apply for with a CDP application, all unpermitted development denied by the Commission in an action on a CDP application filed according to Section B.2 of this Order, and all unpermitted development that was authorized but where the conditions necessary for issuance of the permit were not met within 60 days of the Commission's action on the permit application, Respondents shall submit, for review and approval by the Executive Director, a report documenting removal activities and confirming complete removal of unpermitted development as specified above in this section of the Order. The report shall include a site plan prepared by a licensed surveyor, showing all development retained on the property after removal is completed. The report shall also include photographs of removal activities being undertaken on the property as well as photographs of the property after removal was completed, marked to correspond to the inventories submitted pursuant to Section A of this Order.

D. Modifications and/or Additions Requested by the Executive Director

If the Executive Director determines that any modifications or additions to the inventories, the CDP application, or the removal plan are necessary, including submittal of additional evidence as to when unpermitted development activities were conducted on the property, he shall notify Respondents. Respondents shall complete requested modifications and resubmit the item for approval within 10 days of the notification.

If the Executive Director determines that removal was inadequate, notice will be provided to Respondents outlining the deficiencies and the steps required to complete removal, and a time schedule for additional removal efforts. Respondents shall commence additional removal as required and shall complete removal according to the time schedule provided.

E. Restoration Plan

Within 30 days of the completion of removal of all new unpermitted development, all unpermitted development for which Respondents did not chose to apply for with a CDP application, all unpermitted development denied by the Commission in an action on a CDP application filed according to Section B.2 of this Order, and all unpermitted development that was authorized but where the conditions necessary for issuance of the permit were not met within 60 days of the Commission's action on the permit application, Respondents shall submit, for the review and approval of the Executive Director, a Restoration, Revegetation and Monitoring Plan ("the Plan"). The Executive Director may extend this time for good cause.

The Plan shall be prepared by a qualified restoration ecologist and a qualified geologic engineer, as described in section (d), below and shall include the following:

- 1) Goals and Performance Standards. Section A of the Plan shall present the following goals of the Restoration and Revegetation Project.

- a) Restoration of the property to the condition that existed prior to the unpermitted development through restorative grading of the topography in the areas impacted by the unpermitted development. Restorative grading plans should include sections showing original and finished grades, and quantitative breakdown of grading amounts (cut/fill), drawn to scale with contours that clearly illustrate the original topography of the subject site prior to any grading disturbance. The location for any excavated material to be removed from the site as a result of the restoration of the impacted areas shall be identified. If the dumpsite is located in the Coastal Zone and is not an existing sanitary landfill, a coastal development permit shall be required.
- b) Revegetation of all areas impacted by unpermitted development activities or by the removal of the unpermitted development, with the result that disturbed areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.
- c) Eradication of non-native vegetation within the areas subject to revegetation and those areas that are identified as being subject to disturbance as a result of the restoration and revegetation activities.
- d) Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Restoration and Revegetation Project will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.
- e) Stabilization of soils so that soil is not transported off the property or into the chaparral or riparian ESHA and so that slumping, gullyng, or other surficial instability does not occur.
- f) Section A of the Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (*e.g.*, specified average height within a specified time for a plant species).
- g) Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites shall be located on adjacent areas vegetated with chaparral undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar



slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

- 2) Restoration and Revegetation Methodology. Section C of the Plan shall describe the methods to be used to stabilize the soils and revegetate the impacted areas. Section C shall be prepared in accordance with the following directions:
  - a) The plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the restoration of the impacted areas. Other than those areas subject to revegetation activities, the areas of the site and surrounding areas currently vegetated with chaparral, oak woodlands, or riparian oak woodlands, shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.
  - b) Specify that the restoration of the property shall be performed using hand tools wherever possible, unless it has been demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation and the stream.
  - c) The qualified geologic engineer and restoration ecologist shall specify the methods to be used after restoration to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the

use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.

- d) Describe the methods for revegetation of the site. All plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.
- e) Describe the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.
- f) Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or “special animal” species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.

- 3) Monitoring and Maintenance. Section C of the Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:
  - 4) Respondents shall submit, on an annual basis for a period of five years (no later than September 1<sup>st</sup> each year after restoration is completed) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologic engineer, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the goals and performance standards specified in the Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery at the site.

- 5) During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the restoration of the project site. If any such inputs are required beyond the first two years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first two years, so that the success and sustainability of the restoration of the project site are ensured.
- 6) At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, Respondents shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The Executive Director will determine if the revised or supplemental plan must be processed as a CDP, a new Restoration Order, or modification of Restoration Order CCC-05-RO-08.
  - a) Appendix A shall include a description of the education, training and experience of the qualified geologic engineer and restoration ecologist who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of chaparral habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. A qualified A qualified geologic engineer for this project shall be a geologic engineer who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.
- 7) Submit interim erosion control plans for the review and approval of the Executive Director. The Interim Erosion Control Plan shall be prepared by a qualified restoration ecologist and shall include the following:
  - a) The Interim Erosion Control Plan shall demonstrate that:
    - i) The following temporary erosion control measures shall be used unless it can be demonstrated to the satisfaction of the Executive Director that such measures will not be beneficial, or other methods that are acceptable to the Executive Director are more appropriate: hay bales, wattles, silt fences.
    - ii) Erosion on the site shall be controlled to avoid adverse impacts on adjacent properties and resources.
  - b) The Interim Erosion Control Plan shall include, at a minimum, the following components:

- i) A narrative report describing all temporary runoff and erosion control measures to be used and any permanent erosion control measures to be installed for permanent erosion control.
  - ii) A detailed site plan showing the location of all temporary erosion control measures.
  - iii) A schedule for installation and removal of temporary erosion control measures, in coordination with the long term restoration, revegetation and monitoring plan discussed below.
- F. Within 30 days of the approval by the Executive Director of the documents submitted under Section E of this Order, or within such additional time as the Executive Director may grant for good cause, Respondents shall complete the following actions, in compliance with the plans approved under Section E of this Order:
  - 1) Restore the topography consistent with the Plan, as required by Section E of this order and as approved by the Executive Director.
  - 2) Submit to the Executive Director a report documenting the restoration of the topography. This report shall include photographs that show the restored site. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible.
- F. Within 15 days of the approval by the Executive Director of the documents submitted under paragraph E above, or within such additional time as the Executive Director may grant for good cause, revegetate the disturbed areas with native plants, following the specifications of the Plan approved by the Executive Director, pursuant to Section E above.
- G. In accordance with the schedule set forth in the Plan, approved by the Executive Director pursuant to Section E above, submit to the Executive Director monitoring reports.
- H. After approval of the monitoring reports by the Executive Director, implement within such timeframe as the Executive Director may specify all measures specified by the Executive Director to ensure the health and stability of the restored areas, as required by the Plan.
- I. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director, Commission staff, and any other agency having jurisdiction over the work being performed under this order to access the property to assess compliance with the Restoration Order. Nothing in this order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. Twenty-four hours advance notice shall be provided to Respondents prior to any site visit, except in exigent circumstances.

Within 45 days of issuance of this Order submit for the review and approval of the Executive Director all documents necessary to effectuate merger of the parcels identified as APNs 4464-024-020 and 4464-024-021, 4464-024-022 and 4464-024-023, and 4465-006-054 and 4465-006-

055 so they are recombined with adjacent property to restore the original parcel configuration and to establish that the forty-three acres subject to this Order consists of only four separate parcels.

Within 30 days of Executive Director approval of the documents: (1) submit copies of the documents recorded to effectuate the mergers; (2) take all actions required to cause the records of the County Assessor to reflect the mergers.

## **I. Persons Subject to the Order**

Persons subject to this Restoration Order are Respondents, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

## **II. Identification of the Property**

The property that is subject this Order is described as follows:

Approximately 43 acres, located within a wildlife corridor and containing a USGS-recognized blue-line stream as wells as environmentally sensitive chaparral, oak woodlands, and riparian oak woodland habitat (APNs 4464-024-020; -021; -022; -023; -024; 4465-006-054; -055).

## **III. Description of Unpermitted Development**

Unpermitted development located on the property consists of grading; removal of major vegetation; four attempted subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. The unpermitted development does not include development for which the Commission determined there is a vested right in its decision dated August 11, 1998.

## **IV. Commission Jurisdiction and Authority to Act**

The Coastal Commission has jurisdiction to take enforcement action to remedy the Coastal Act violations on the property due to the fact that the property lies within the Coastal Zone, in an unincorporated area of Los Angeles County, not covered under a certified Local Coastal Program. The Commission issues this order pursuant to its authority under Coastal Act Section 30810.

## **V. Effective Date and Terms of the Order**

The effective date of the Order is the date of approval by the Commission. The Order shall remain in effect permanently unless and until modified or rescinded by the Commission.

## **VI. Submittal of Documents**

All documents submitted pursuant to this Order must be sent to:

California Coastal Commission  
Attn: Christine Chestnut  
45 Fremont St., Suite 2000  
San Francisco, CA 94105-2219.

with a copy sent to:  
California Coastal Commission  
Attn: Pat Veasart  
89 S. California Street Suite 200  
Ventura, CA 93001-2801

## **VII. Findings**

The Order is issued on the basis of the findings adopted by the Commission at the August 2005 hearing, as set forth in the attached document entitled “Staff Report and Findings for Cease and Desist Order and Restoration Order”.

## **VIII. Compliance Obligation**

Strict compliance with the Order by all parties subject thereto is required. Failure to comply strictly with any term or condition of the Order including any deadline contained in the Order will constitute a violation of this Order and may result in the imposition of civil penalties, under Coastal Act Section 30821.6, of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in which the violation persists, in addition to any other penalties authorized under Chapter 9 of the Coastal Act, including exemplary damages under Section 30822.

## **IX. Extension of Deadlines**

The Executive Director may extend deadlines for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least ten days prior to expiration of the subject deadline.

## **X. Modifications and Amendments to this Consent Order**

Except as provided in Section IX of this order, this order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission’s administrative regulations.

## **XI. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the order is issued may file a petition with the Superior Court for a stay of this order.

## **XII. Government Liability**

The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities required and authorized under this Cease and Desist Order, nor shall the State of California be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Order.

## **XIII. Successors and Assigns**

This Cease and Desist Order shall run with the land, binding all successors in interest, future owners of the Subject Property, heirs and assigns of Respondents. Notice shall be provided to all successors, heirs and assigns of any remaining obligations under this Order.

## **XIV. No Limitation on Authority**

Except as expressly provided herein, nothing herein shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Cease and Desist Order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf  
of the California Coastal Commission.

By: \_\_\_\_\_ Peter Douglas, Executive Director

**CCC-05-CD-08 and CCC-05-RO-05**

**Exhibit List**

**Exhibit  
Number**

**Description**

1. Site Map and Location.
2. Assessor's Parcel Maps, Book 4464/Page 024 and Book 4465/Page 006.
3. Malibu/Santa Monica Mountains Land Use Plan, Attachment 2: "Sensitive Environmental Resources", dated December 11, 1986.
4. Inspection Warrant, filed in Superior Court of California, Los Angeles County on October 22, 1993.
5. Notice of Intent to Commence Cease and Desist Order Proceedings, dated June 4, 1993.
6. Staff Report, "Adopted Findings for Issuance of Cease and Desist Order" for CDO No. CCC-93-CD-03, approved by the Commission on November 16, 1993.
7. Staff Report, "Adopted Findings for Amendment to Commission Cease and Desist Order", dated January 13, 1994.
8. Letter from Commission staff to Ms. Witter and Mr. Richardson, dated February 1, 1994.
9. Petition for Writ of Mandate, file on behalf of Ms. Witter and Mr. Richardson in Superior Court of California, Los Angeles County on January 19, 1994.
10. Decision of the Superior Court of California, Los Angeles County, dated December 4, 1996. References to the document made in this report can be found on page 1 of the document.
11. Staff Report, "Staff Recommendations for Rescission of Cease & Desist Order", dated February 5, 1997. Reference to the document made in this report can be found on page 3 of the document.
12. Notice of Intent to Commence Cease and Desist Order Proceedings, dated February 18, 1997.
13. Complaint for Declaratory Relief, Preliminary and Permanent Injunction, Civil Penalties and Fines, filed on behalf of the Commission in Superior Court of California, Los Angeles County on January 23, 1995.
14. Agreement to Compromise and Settle Disputed Claims and Mutual Release of Claims, signed by all parties on October 8, 9, and 23, 1998. Section 4.0, concerning filing of CDP applications, which is referenced in this report, can be found on page 3 of the document.
15. CDP No. 5-82-377, issued by the Commission on March 2, 1984 and the Staff Report, "Revised Staff Report and Recommendations for CDP No. 5-82-377", approved by the Commission per revised recommendation on August 24, 1982.
16. Letters, regarding incomplete status of submitted CDP applications No. 4-02-233 and 4-02-234, sent by Commission staff to Ms. Witter and Mr. Richardson on November 26, 2002.
17. Letters, accompanying returned CDP applications No. 4-02-233 and 4-02-234, sent by Commission staff to Ms. Witter and Mr. Richardson on September 18, 2003.



18. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, dated February 25, 2005.
19. Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, dated March 18, 2005.
20. Notice of Intent to Record a Notice of Violation of the Coastal Act, dated March 18, 2005.
21. Cover letter accompanying Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings and Notice of Intent to Record a Notice of Violation of the Coastal Act, sent by Commission staff to Mr. Petrovsky on May 18, 2005.
22. Notice of Violation of the Coastal Act, recorded at Los Angeles County Recorder's Office on June 17, 2005.
23. Photographs taken by Commission staff during site visits on October 31, 2002 and March 24, 2005.
- 24-27. Aerial photographs of the property and surrounding area, provided by the County of Los Angeles.
28. CDP No. P-2-17-78-2706, issued by the Commission on July 7, 1978.
29. Deed Restriction, Document No. 78-739532, recorded by Douglas Richardson, Karen Richardson, Michael Burrett, and Norman E. Fisher in the Los Angeles County Records Office on July 7, 1978.
30. Parcel Map Waiver No. 7154, document No.84-285673, recorded by Douglas Richardson, reproduced as Exhibit 27 in the staff report, "Claim of Vested Rights" heard by the Commission on August 11, 1998.
31. Memorandum from Commission staff biologist, Dr. John Dixon, to Christine Chestnut on July 27, 2005.
32. Malibu/Santa Monica Mountains Land Use Plan, Attachment 3: "Permitted Uses and Development Standards in Environmentally Sensitive Habitat Areas, Disturbed Sensitive Resource Area[s], Significant Watersheds, Resource Management Areas, Wildlife Corridors, and Significant Woodlands", dated December 11, 1986.
33. Letter from Sherman Stacey to Commission staff, dated July 27, 2005.